

7.09.0 TELECOMMUNICATIONS FACILITIES (2013)

A. Purpose and Intent

The regulation of telecommunications facilities is important to minimize visual and environmental impacts and assure all new facilities are consistent with the goals and identity of the Town of Milford. It is the express purpose of this Section to preserve the scenic, historical and cultural values of the Town, balance economic growth and enhance the ability of providers of telecommunications services to offer such services to the community effectively and efficiently. Carriers shall be allowed to locate telecommunications facilities within the Town provided they are consistent with the appropriate land use regulations that will ensure compatibility with the natural and built features and character of the Town. Compatibility with these features are measured based on the change in community scale and character in relation to the height, mass, materials, contrasts, or proportion within the surroundings of a proposed telecommunications facility.

The intent of this ordinance is to implement the following goals and objectives throughout the Town of Milford, while conforming to federal, state and local laws and regulations:

- Facilitate the provision of wireless telecommunication services to the residents and businesses of Milford;
- Provide for the appropriate location and development of telecommunications facilities;
- Minimize adverse visual and environmental effects of towers and antennas through careful design and siting standards;
- Encourage co-location whenever possible; and
- Minimize economic impacts on adjacent property values.

B. Applicability

The terms of this Section and the Development Regulations shall apply to telecommunications facilities (hereinafter "facility(ies)") on property owned by the Town of Milford, on privately owned property, and on property that is owned by any governmental entity that acts in its proprietary capacity to lease such property to a carrier.

7.09.1 DEFINITIONS

For the purpose of this Article, the following terms shall have the meaning given herein:

Antenna: The surface from which wireless radio signals are sent and/or received by a telecommunications facility.

Antenna array: A collection of antennas attached to a mount to send and receive radio signals.

Average tree canopy height: An average height found by inventorying the height at above-ground level (AGL) of all trees over twenty (20) feet in height for a defined area.

Camouflaged: A telecommunications facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure.

Carrier: A Company that provides telecommunications services. Also sometimes referred to as a provider.

Co-location Collocation: The use of a single mount on the ground by more than one carrier (vertical co-location) or the same carrier with multiple licenses, and/or the use of several mounts on an existing building or structure by more than one carrier or the same carrier with multiple licenses.

Environmental assessment (EA): An EA is a document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a telecommunications facility is placed in certain designated areas.

Equipment shelter: An enclosed structure, cabinet, shed, vault, or box near the base of the mount within which are housed equipment for telecommunications facilities such as batteries and electrical equipment. Equipment shelters are sometimes referred to as base transceiver stations.

Facility: See Telecommunications Facility

Fall zone: The area on the ground from the base of a ground mounted telecommunications facility that forms a circle with a diameter equal to the height of the facility, including any antennas or other appurtenances. The fall zone is the area within the area defined by the circle, which there is a potential hazard from falling debris (such as ice) or collapsing material.

Guyed tower: A monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.

Height: The height above ground level (AGL) from the natural grade of a site to the highest point of a structure.

Lattice tower: A type of mount with multiple legs and structural cross bracing between the legs, that is self-supporting and freestanding.

Mast: A thin pole that resembles a streetlight standard or a telephone pole. A dual-polarized antenna is typically deployed on a mast.

Monopole: A thicker type of mount than a mast that is self-supporting with a single shaft of wood, steel or concrete, or other material that is designed for the placement of antennas and arrays along the shaft.

Mount: The structure or surface upon which antennas are mounted, including the following four types of mounts:

1. Roof-mounted (mounted on the roof of a building)
2. Side-mounted (mounted on the side of a building)
3. Ground-mounted (mounted on the ground)
4. Structure-mounted (mounted on a structure other than a building)

Radio frequency (rf) engineer: An engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.

Radio frequency radiation (rfd): The emissions from telecommunications facilities.

Shot Clock: Federal Communications Commission (FCC) ruling for a “reasonable period of time” to process wireless applications.

- 90 days for co-location request
- 150 days for new siting applications

Security barrier: A wall, fence, or berm that restricts an area from unauthorized entry or trespass.

Separation: The distance between one carrier’s array of antennas and another carrier’s array.

Telecommunications facility: A facility for the provision of personal wireless services as defined by the Telecommunications Act of 1996, as amended. Telecommunications facilities include a mount, antenna, equipment shelter, and other related equipment. Telecommunications facilities do not include private or non-commercial wireless communication facilities such as amateur ham radio and citizen band radio.

Telecommunications services: The three types of services regulated by this Section are: Commercial mobile radio services, unlicensed wireless services and common carrier wireless exchange access services as described in the Telecommunications Act of 1996, as amended.

7.09.2 DISTRICT & FEDERAL REGULATIONS

- A. Federal Requirements - All facilities shall meet or exceed current standards and regulations of the Federal Aviation Administration (FAA), Federal Communications Commission (FCC) (as per Telecommunications Act of 1996), and any other agency of the federal government with the authority to regulate such facilities.
- B. Location - Telecommunications facilities shall be permitted in all zoning districts in accordance with this ordinance. Applicants seeking approval for these facilities shall first evaluate existing structures for their siting. Only after finding that there are no suitable existing structures pursuant to Section 7.09.2:C herein, shall a provider propose a new ground-mounted facility.
- C. Existing Structures: Policy - When available, telecommunications facilities shall be located on existing structures, including but not limited to buildings, water towers, existing telecommunications facilities, utility poles or towers, and related facilities, provided that such installation preserves the character and integrity of those structures.
- D. Existing Structures: Burden of Proof - The applicant shall have the burden of proving that there are no existing structures which are suitable to locate its telecommunications facility and/or transmit or receive radio signals. To meet that burden, the applicant shall take all the following actions to the extent possible:
 - 1. The applicant shall submit to the Planning Board a list of all contacts made with owners of potential sites regarding the availability of potential space for a telecommunications facility. If the Planning Board informs the applicant that additional existing structures may be satisfactory, the applicant shall contact the property owner(s) of those structures.
 - 2. The applicant shall provide copies of all letters of inquiry made to owners of existing structures, letters of rejection if received, and proof of certified mailing. If letters of rejection are not provided, at a minimum, unanswered "Return Receipt Requested" forms from the U.S. Post Office shall be provided for each owner of existing structures that was contacted.
 - 3. If the applicant claims that a structure is not capable of physically supporting a telecommunications facility, this claim shall be certified by a licensed professional engineer. The certification shall, at a minimum, explain the structural issues and demonstrate that the structure cannot be modified to support the telecommunications facility without unreasonable costs. The estimated cost shall be provided to the Planning Board.
- E. Ground-mounted Facilities: Policy - New ground-mounted facilities are permitted but only when the use of existing structures and buildings are found to not be feasible. If the applicant demonstrates that it is not feasible to locate on an existing structure, ground-mounted telecommunications facilities shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to: use of compatible building materials and colors, screening, landscaping and placement within trees.

7.09.3 USE REGULATIONS

A telecommunications facility may require site plan review as noted below, and a building permit in all cases, and may be permitted as follows:

- A. Existing Tower Structures - Subject to the issuance of a building permit that includes site plan approval by the Planning Board, which review shall include, but not be limited to issues relating to access, bonding, and security for removal, structural integrity and appropriate camouflage of such siting. Carriers may locate a telecommunications facility on any guyed tower, lattice tower, mast, or monopole in existence prior to the adoption of this Section, or on any facility previously approved under the provisions of this Section so long as the co-location complies with the approved site plan. All the Performance Standards from this Section shall be met. This provision shall apply only so long as the height of the mount is not increased, a security barrier already exists, and the area of the security barrier is not increased. Otherwise, site plan review is required.
- B. Reconstruction of Existing Tower Structures - An existing guyed tower, lattice tower, monopole, or mast in existence prior to the adoption of this Section may be reconstructed with a maximum twenty (20) foot increase in height so as to maximize co-location so long as the standards of this Section are met and so long as this twenty (20) foot increase in height does not cause a facility previously existing at less than two-hundred (200) feet to exceed two-hundred (200) feet in height. The mount shall be replaced with a similar mount that does not significantly increase the visual impact on the community. Site plan review is required.
- C. Existing Structures - Subject to the provisions of this Section and site plan review under NH RSA 674:43:III and except as otherwise permitted under Section 7.09.3:A, a carrier may locate a telecommunications facility on an existing structure, building, utility tower or pole, or water tower. For the purpose of this section, new structures that are conforming to all other district zoning requirements shall be considered as existing structures.
- D. Ground-mounted Facility - A telecommunications facility involving construction of a ground-mount shall require site plan review and be subject to the provisions of this Section.

7.09.4 DIMENSIONAL REQUIREMENTS

- A. All telecommunications facilities erected, constructed, located, replaced, altered, or extended within the Town shall comply with the following dimensional requirements:
 - 1. Height Maximum - In no case shall a telecommunications facility exceed two-hundred (200) feet in height, unless the mount for the facility was greater than two-hundred (200) feet in height prior to the adoption of this Article.
 - 2. Height, Existing Structures and Utility Poles - Carriers that locate new telecommunications facilities on water towers, electric transmission and distribution towers, utility poles and similar existing utility structures, guyed towers, lattice towers, masts, and monopoles may be permitted to increase the height of those structures no more than twenty (20) feet, or forty (40) feet at the discretion of the Planning Board, if the additional height will not materially impair the visual impacts of the site. This increase in height shall only be permitted once for each structure.
 - 3. Height, Ground-Mounted Facilities – New ground-mounted telecommunications facilities shall not project higher than twenty (20) feet above the average tree canopy height within a one-hundred fifty (150) foot radius of the mount, security barrier, or designated clear area for access to equipment, whichever is greatest.
 - 4. Setbacks - In addition to compliance with the minimum zoning district setback requirements, ground-mounted telecommunications facilities shall be set back, at a minimum, the distance equal to the fall zone, as defined in Section 7.09.1 and 7.09.4:A.5. Fences necessary for the

facility shall comply with the setback provisions of the zoning district in which the facility is located if the fence is six (6) feet or more in height.

5. Fall Zone for Ground-Mounts - In order to ensure public safety, the minimum distance from the base of any ground-mount of a telecommunications facility to any property line, public road, habitable dwelling, business or institutional use, or public recreational area shall be, at a minimum, the distance equal to the fall zone, as defined in this Section. The fall zone may cross property lines, so long as the applicant secures a fall zone easement from the affected property owner(s). The area of the easement shall be shown on all applicable plans submitted to the Town, and the terms of the easement shall be provided as part of the Site Plan review. Easements shall be recorded at the Hillsborough County Registry of Deeds.
6. Fall Zone for Non-Ground Mounts - In the event that an existing structure is proposed as a mount for a telecommunications facility, a fall zone shall not be required, but the setback provisions of the zoning district shall apply. In the case of pre-existing non-conforming structures, telecommunications facilities and their equipment shelters shall not increase any non-conformities.

- B. Planning Board Flexibility: Heights - In reviewing a site plan application for a telecommunications facility, the height limit imposed may be increased by the Planning Board by approval of a conditional use permit as defined in section 7.11.0. The Planning Board may permit an increase in the height of a ground-mounted facility up to forty (40) feet above the average tree canopy height, if no material increase in visual or environmental impacts will result from the increased height. The visual and environmental criteria of this Section and the Development Regulations shall be the guidelines in making this determination.

7.09.5 PERFORMANCE AND DESIGN STANDARDS

A. Visibility

1. Visual impacts are measured on the basis of:
 - a. Change in community scale, as exhibited in relative height, mass or proportion of the telecommunications facility within their proposed surroundings
 - b. New visible elements proposed on a contrasting background
 - c. Different colors and textures proposed against a contrasting background
 - d. Use of materials that are foreign to the existing built environment
2. Enhancements are measured on the basis of:
 - a. Conservation of opportunities to maintain community scale, e.g. buffering areas and low-lying buildings should not be compromised to as to start a trend away from the existing community scale
 - b. Amount and type of landscaping and/or natural vegetation
 - c. Preservation of view corridors, vistas, and view sheds
 - d. Continuation of existing colors, textures and materials
3. Visibility focuses on:
 - a. Eliminating or mitigating visual impact
 - b. Protecting, continuing, and enhancing the existing environment
4. Camouflage for Facilities on Existing Buildings or Structures - Roof Mounts when a telecommunications facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal or camouflage the facility within or behind existing or new architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front facade in order to limit their impact on the building's silhouette.

5. Camouflage for Facilities on Existing Buildings or Structures - Side Mounts - Telecommunications facilities, which are side-mounted, shall blend with the existing building's architecture and, if individual antenna panels are over five (5) square feet, the panels shall be painted or shielded with material consistent with the design features and materials of the building.
6. Camouflage for Ground-Mounted Facilities - All ground-mounted telecommunications facilities shall be surrounded by a buffer of dense tree growth, primarily of coniferous or evergreen trees, that extends continuously for a minimum distance of one hundred-fifty (150) feet from the mount, security barrier, or designated clear area for access to equipment, whichever is greatest, and screens views of the facility in all directions. These trees shall be existing on the subject property, planted on site, or be within a landscape easement on an adjoining site. The Planning Board shall have the authority to decrease, relocate, or alter the required buffer based on site conditions. The one-hundred and fifty (150) foot vegetative buffer area shall be protected by a landscape easement or be within the area of the carrier's lease. The easement or lease shall specify that the trees are dead or dying and present a hazard to persons or property.
7. Color - To the extent that any telecommunications facilities extend above the height of the vegetation immediately surrounding it, they shall be of a color, which blends with the background or surroundings.
8. Equipment Shelters - Equipment shelters for telecommunications facilities shall be designed consistent with one of the following design standards:
 - a. Equipment shelters shall be located in underground vaults; or
 - b. Equipment shelters shall be designed so that the shelters are architecturally consistent, with respect to materials and appearance, to the buildings in the area of the telecommunications facilities; or
 - c. Equipment shelters shall be camouflaged behind an effective year-round landscape buffer, equal to the height of the proposed building, and/or wooden fence. The Planning Board shall determine the style of fencing and/or landscape buffer that is compatible with the neighborhood; or
 - d. If mounted on a rooftop, the equipment shelter shall be concealed or camouflaged so that the shelter either is not visible at grade or appears to be a part of the original structure.
9. Lighting, Signage and Security
 - a. Lighting –
 - i Facility Lighting- The mounts of telecommunications facilities shall be lighted only if required by the Federal Aviation Administration (FAA).
 - ii Site Lighting- If required, all on site lighting shall be shielded from abutting properties. Foot-candle measurements at the property line shall be 0.0 initial foot candles.
 - b. Signage - Signs shall be limited to those needed to identify the property and the owner and warn of any danger. All signs shall comply with the requirements of the Milford Zoning Ordinance.
 - c. Security Barrier - The Planning Board shall have final authority on whether a ground mounted telecommunications facility should be surrounded by a security barrier.
10. Historic Buildings
 - a. Any telecommunications facility located on or within a historic structure shall not alter the character-defining features, distinctive construction methods, or original historic materials of the building.
 - b. Any alteration made to a historic structure to accommodate a telecommunications facility shall be fully reversible.

- c. Telecommunications facilities authorized by this subsection shall be concealed within or behind existing architectural features, or shall be located so that they are not visible from public roads and viewing areas.
- 11. Scenic Landscapes and Vistas - Ground-mounted facilities shall not be located within open areas that are clearly visible from public roads, recreational areas, or abutting properties. All ground-mounted telecommunications facilities shall be surrounded by a buffer of dense tree growth as per Section 7.09.5:A.6.
- 12. Driveways - If available, existing entrances and driveways to serve a telecommunications facility shall be utilized, unless the applicant can demonstrate that a new entrance and driveway will result in less visual, traffic and environmental impact. New driveways to serve a telecommunications facility shall not exceed twelve (12) feet in width. A gravel or crushed stone surface is encouraged.
- 13. Antenna Types - Any antenna array placed upon an existing or proposed ground mount, utility pole, or transmission line mount shall have a diameter of no more than four (4) feet, exclusive of the diameter of the mount. A larger diameter antenna array may be permitted after a finding by the Planning Board that the visual impacts of a larger antenna array are negligible.
- 14. Ground and Roof Mounts - All ground mounts shall be of a mast type mount. Lattice towers, guyed towers, and roof mounted monopoles are expressly prohibited, unless constructed as part of a reconstruction project permitted under Section 7.09.3:B.
- 15. Hazardous Waste - No hazardous waste shall be discharged on the site of any telecommunications facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least one hundred and ten (110) percent of the volume of the hazardous materials stored or used on the site.
- 16. Noise - Telecommunications facilities shall not generate noise in excess of that permitted by Town Ordinance.
- 17. Radio frequency Radiation (RFR) Standards - All equipment proposed for a telecommunications facility shall be fully compliant with the FCC Guidelines for Evaluating the Environmental Effects of Radio frequency (FCC Guidelines), under *Report and Order*, FCC 96-326, published on August 1, 1996, and all subsequent amendments.

7.09.6 MONITORING AND MAINTENANCE

- A. Maintenance - The owner of the facility shall maintain the telecommunications facility in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, and maintenance of the buffer areas and landscaping.
- B. Monitoring - As part of the issuance of the site plan approval or building permit, the property owner shall agree that the Town of Milford may enter the subject property to obtain RFR measurements and noise measurements at the expense of the carrier. The Town shall provide reasonable written notice to the carrier and landowner and provide them the opportunity to accompany the Town representatives when the measurements are conducted.
- C. Security for Removal - Recognizing the hazardous situation presented by abandoned and unmonitored telecommunications facilities, all owners of telecommunications facilities shall obtain and maintain a bond or other approved form of security, in an amount set forth by the Planning

Board, that represents the cost for removal and disposal of abandoned telecommunications facilities in the event that a facility is abandoned and the facility owner is unwilling or unable to remove the facility in accordance with Section 7.09.8.

The amount of security shall be based upon the removal cost, plus fifteen percent (15%), be provided by the property owner, and the amounts certified by a professional structural engineer licensed in New Hampshire. The owner of the facility shall provide the Planning Board with a revised removal cost estimate and structural evaluation prepared by a professional structural engineer licensed in New Hampshire every five (5) years from the date of the Planning Board approval of the site plan. If the cost has increased more than fifteen percent (15%), then the property owner shall provide additional security in the amount of the increase.

7.09.7 PROCEDURAL REQUIREMENTS

- A. Application Process - All wireless telecommunications equipment installations and wireless telecommunications site developments, except as provided elsewhere, are subject to review and Site Plan Approval by the Planning Board. The Planning Board shall act upon the application in accordance with 5.03 and 5.04 Submittal Requirements of the Milford Development Regulations and RSA 676:4 as amended. In addition to the following items:
 - 1. An inventory of existing towers that are within the jurisdiction of the Town and those within two miles of the border thereof, including specific information about the location, height, design of each tower, as well as economic and technological feasibility for the co-location on the inventoried towers. The Planning Board may share such information with other applicants applying for approvals or conditional use permits under this section or other organizations seeking to locate antennas within the jurisdiction of the Town, provided, however, that the Planning Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
 - 2. If the applicant is proposing to build a new tower, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna in accordance with Section 7.09.2:D.
- B. Review Process - Planning Board Approval and Town Building Permit Required: Non-residential and non-amateur telecommunications facilities may be located within the Town of Milford, subject to Planning Board approval and issuance of a building permit. Modifications to an existing installation shall also be subject to Planning Board approval. Construction or modification of an approved facility shall not begin or continue without a valid building permit issued.
- C. All applications shall be assessed for a basic completeness review within 30 days of receipt of the application. Incomplete applications will not be reviewed by the Planning Board. If an application passes this basic completeness review, it should be date stamped to establish the date when it was filled. If the Board or staff determines additional information is needed to evaluate the application, any request for additional information must be submitted within thirty (30) days of the filing date. The Board shall approve, approve with conditions, or deny the application within 90 days (co-location applications) or 150 days (siting applications) of the filing date in accordance with FCC standards.

7.09.8 ABANDONMENT OR DISCONTINUATION OF USE

- A. Notification - At such time that a carrier plans to abandon or discontinue operation of a telecommunications facility, the owner of the facility shall notify the Town by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than sixty (60) days prior to abandonment or discontinuation of operations. In the event

that a carrier fails to give such notice, the telecommunications facility shall be considered abandoned upon such discontinuation of operations.

- B. Removal - Any telecommunications facility that is declared abandoned shall be considered hazardous to the public health and safety. Upon abandonment or discontinuation of use, the owner shall physically remove the abandoned structure and restore the site to its natural appearance within ninety (90) days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:
 - 1. Removal of antennas, mount, equipment shelters and security barriers from the subject property.
 - 2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
 - 3. Restoring the location of the telecommunications facility to its natural condition, except that any landscaping and grading shall remain in the after-condition.
- C. Failure to Remove - If the owner of the facility does not remove the facility upon the Order of the Zoning Administrator, then the Board of Selectmen shall, after holding a public hearing with notice to the owner of the facility, the property owner, and abutters, issue a Declaration of Abandonment. The owner of the facility shall dismantle and remove the facility within ninety (90) days of receipt of the Declaration of Abandonment by the Board of Selectmen. If the abandoned facility is not removed within ninety (90) days, the Town may execute the security bond to pay for this action.